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ISSUE DATE: 07-May 2004

CASE NO.: 2002-LHC-02122
OWCP NO.: 07-105398

In the Matter of:

CHRISTOPHER HEAVIN,
Claimant,
vs.
CHEVRON, U.S.A., INC.,
Employer,

CRAWFORD & COMPANY,
Carrier, and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party in Interest

Appearances: Eric A. Dupree, Esquire,
For the Claimant

James P. Aleccia, Esquire
For the Employer/Carrier

Pamela W. McKee, Esquire
For the Party in Interest

Before: Jennifer Gee
Administrative Law Judge

ORDER DENYING REQUEST FOR MODIFICATION

This is an action for benefits under the Longshore and Harbor Workers Compensation Act, 33 U.S.C. §901 *et seq.* ("the Act"). I issued a Decision and Order Granting Permanent Total Disability Benefits ("Initial Decision") to the Claimant on December 11, 2003. After receiving the decision, the Claimant filed a Motion for Reconsideration on December 28, 2003 asking for:

1. A finding that the Claimant is entitled to temporary total disability benefits from the date of the injury through July 5, 1988;

2 Clarification concerning the Claimant's entitlement to permanent total disability benefits from March 13, 1998, through March 15, 1999, when he was receiving his Interferon treatment;

3 A finding that the Claimant is entitled to reimbursement for the cost of medical testing performed by Dr. Thomas J. Wegman; and

4 A finding that the Claimant is entitled to penalties and interest on the monies owed to him.

On February 26, 2004, I granted the Motion for Reconsideration and made the findings the Claimant requested. I modified the order in my Initial Decision to be consistent with the modified findings.

On March 12, 2004, the Respondents' filed a Petition for Reconsideration asking that I reconsider my ruling and find that:

1. The claimant is entitled to temporary, not permanent, total disability benefits from March 13, 1998, through March 15, 1999; and

2. That the Claimant is not entitled to penalties under §14(e) of the Act.

The Claimant filed an opposition to the Respondent's Petition for Reconsideration, asking me to affirm my modified findings.

On March 31, 2004, the Respondents filed a "Further Petition for Reconsideration asking that I also reconsider my findings in the Initial Decision that the Employer is not entitled to any relief under Section 8(f) of the Act. The Director of the Office of Workers' Compensation Programs opposes the second petition for reconsideration, arguing that it is untimely filed.

The Claimant's Entitlement to Permanent Total Disability from March 13, 1998 through March 15, 1999

The Respondents' request for reconsideration of this finding is DENIED. As stated in my order granting the Claimant's Motion for Reconsideration, I found that the Claimant was totally disabled from March 13, 1998 through March 15, 1999, for **two** reasons. I found that he was permanent and stationary beginning July 6, 1988, and that he was permanently and totally disabled because of his injury from that day forward, **including** the period from March 13, 1998, through March 15, 1999. I also found that he was temporarily totally disabled during the same period because of his Interferon treatment. These were alternative findings. The second finding was made because the Claimant had asked for such a finding and was not intended to and will not replace the

finding that he was permanently and totally disabled during that time period because of his 40' fall on the oil drilling platform.

The §14(3) Penalties

In my order granting the Claimant's motion for reconsideration, I found that the Employer had notice as early as March 21, 1997, that there was an issue over the amount of the Claimant's benefits. The Respondents' argue that §14(e) penalties should not be assessed against the Employer because the issue of the Claimant's average weekly wage was not raised and clearly disputed between the parties until the 1999 informal conference. However, they acknowledge that on March 21, 1997, the Claimant filed a positional statement with the Department of Labor indicating that the "amount of benefits" was an issue. They argue that they were not truly on notice that there was an issue because the Claimant failed to provide sufficient documentation to substantiate his claim that the Claimant should have a higher average weekly wage and he also failed to provide a method for computing the Claimant's average weekly wage.

I do not find this argument persuasive. Though the Claimant did not provide the documentation to substantiate the claim, the Employer was on notice that there was a dispute and could have filed the Notice of Controversion, if only based on an argument that there was inadequate documentation to support a claim for more benefits. Thus, the Respondents' request for reconsideration of this finding is DENIED.

Petition for Section 8(f) Relief

In the Further Petition for Reconsideration, the Respondents ask that I reconsider the finding in my Initial

Decision that the employer is not entitled to Section 8(f) relief. This request is also DENIED.

As pointed out by the Director of the Office of Workers' Compensation Programs, this Further Petition for Reconsideration was not timely filed. While the Respondents' first Petition for Reconsideration was timely filed after I granted the Claimant's Motion for Reconsideration, the Further Petition for Reconsideration was not filed within 10 days of the service of that order. Its filing should not be allowed to relate back to the Petition for Reconsideration since it raises a wholly separate issue for reconsideration that was not mentioned in the Respondent's timely filed Petition for Reconsideration. It is not a modification of the timely filed petition.

Instead, it asks for reconsideration of an issue that was not the subject of the February 2004 modifications made to my Initial Decision. It asks for reconsideration of a finding made in the Initial Decision which was filed in December 2003. As pointed out by the Director of the Office of Workers' Compensation Programs, this reconsideration request should have been filed within 10 days after service of the Initial Decision by the District Director.

Regardless of the timeliness of the request, the Respondents' have not presented any arguments that warrant changing my findings on this issue. I found in my Initial Decision that the employer failed to establish its entitlement to Section 8(f) relief. The discussion in my initial Decision adequately addresses that issue, and I see no reason to reiterate it again.

Accordingly, the Respondents' Petition for Reconsideration and Further Petition for Reconsideration are DENIED.

/s/ Jennifer Gee
JENNIFER GEE,
Administrative Law Judge